

A

# B I L L

## INTITLED

An Act to facilitate the enforcement in England and Ireland of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and vice versa.

A.D. 1930.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any court in any part of His Majesty's dominions outside the United Kingdom to which this Act extends, and a certified copy of the order has been transmitted by the governor of that part of His Majesty's dominions to the Secretary of State, the Secretary of State shall send a copy of the order to the prescribed officer of a court in England or Ireland for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall from the date of such registration be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

Enforcement in England and Ireland of maintenance orders made in His Majesty's dominions outside the United Kingdom.

(2) The court in which an order is to be so registered as aforesaid shall, if the court by which the order was made was a court of superior jurisdiction, be the Probate Divorce and Admiralty Division of the High Court, or in Ireland the King's Bench Division (Matrimonial) of the High Court of Justice in Ireland, and if the court was not a court of superior jurisdiction, be a court of summary jurisdiction.

[Bill 170]

A

A.D. 1920.

Transmission of maintenance orders made in England or Ireland.

2. Where a court in England or Ireland has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in some part of His Majesty's dominions outside the United Kingdom to which this Act extends, the court shall send to the Secretary of State for transmission to the governor of that part of His Majesty's dominions a certified copy of the order.

Power to make provisional orders of maintenance against persons resident in His Majesty's dominions outside the United Kingdom.

3.—(1) Where an application is made to a court of summary jurisdiction in England or Ireland for a maintenance order against any person, and it is proved that that person is resident in a part of His Majesty's dominions outside the United Kingdom to which this Act extends, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in such part of His Majesty's dominions as aforesaid.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made the court shall send to the Secretary of State for transmission to the governor of the part of His Majesty's dominions in which the person against whom the order is made is alleged to reside the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends for confirmation, and the order has by that court been remitted to the court of summary jurisdiction which made the order for the purpose of taking further evidence, that court or any other court of summary

jurisdiction sitting and acting for the same place shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application. A.D. 1920.

5 If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Secretary of State and dealt with in like manner as the original depositions.

10 (5) The confirmation of an order made under this section shall not affect any power of a court of summary jurisdiction to vary or rescind that order: Provided that on the making of a varying or rescinding order the court shall send a certified copy thereof to the Secretary of State for transmission to the governor  
15 of the part of His Majesty's dominions in which the original order was confirmed, and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if  
20 any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

4.—(1) Where a maintenance order has been made by a  
25 court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends, and the order is provisional only and has no effect unless and until confirmed by a court of summary jurisdiction in England or Ireland, and a certified copy of the order, together with the depositions of witnesses and  
30 a statement of the grounds on which the order might have been opposed has been transmitted to the Secretary of State, and it appears to the Secretary of State that the person against whom the order was made is resident in England or Ireland, the Secretary of State may send the said documents to the  
35 prescribed officer of a court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

40 (2) A summons so issued may be served in England or Ireland in the same manner as if it had been originally

Power of court of summary jurisdiction to confirm maintenance order made out of the United Kingdom.

A.D. 1920. issued or subsequently endorsed by a court of summary jurisdiction having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as to the court after hearing the evidence may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

5. The Secretary of State may make regulations as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

Power of Secretary of State to make regulations for facilitating communications between courts.

6.—(1) A court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed.

A.D. 1920.  
Mode of enforcing orders.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily:

Provided that if the order is of such a nature that if made by the court in which it is so registered, or by which it is so confirmed, it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

(3) A warrant of distress or commitment issued by a court of summary jurisdiction for the purpose of enforcing any order so registered or confirmed may be executed in any part of the United Kingdom in the same manner as if the warrant had been originally issued or subsequently endorsed by a court of summary jurisdiction having jurisdiction in the place where the warrant is executed.

7. The Summary Jurisdiction Acts shall apply to proceedings before courts of summary jurisdiction under this Act in like manner as they apply to proceedings under those Acts, and the power of the Lord Chancellor to make rules under section twenty-nine of the Summary Jurisdiction Act, 1879, shall include power to make rules regulating the procedure of courts of summary jurisdiction under this Act.

Application of Summary Jurisdiction Acts.

8. Any document purporting to be signed by a judge or officer of a court outside the United Kingdom shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Proof of documents signed by officers of court.

9. Depositions taken in a court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends for the purposes of this Act, may be received in evidence in proceedings before courts of summary jurisdiction under this Act.

Depositions to be evidence.

10. For the purposes of this Act the expression "maintenance order" means an order other than an order of affiliation for the

Interpretation.

A.D. 1920. — periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made; and the expression "dependants" means such persons as that person is, according to the law in force in the part of His Majesty's dominions in which the maintenance order was made, liable to maintain; the expression "certified copy" in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy, and the expression "prescribed" means prescribed by rules of court. 10

Application to Ireland.

11. In the application of this Act to Ireland the following modifications shall be made:—

- (a) The Lord Chancellor of Ireland may make rules regulating the procedure of courts of summary jurisdiction under this Act, and other matters incidental thereto: 15
- (b) Orders intended to be registered or confirmed in Ireland shall be transmitted by the Secretary of State to the prescribed officer of a court in Ireland through the Lord Chancellor of Ireland: 20
- (c) The expression "maintenance order" includes an order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Acts, 1839 to 1914. 25

Extent of Act.

12.—(1) Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by courts within England and Ireland, His Majesty may by Order in Council extend this Act to that part, and thereupon that part shall become a part of His Majesty's dominions to which this Act extends. 30

(2) His Majesty may by Order in Council extend this Act to any British protectorate and where so extended this Act shall apply as if any such protectorate was a part of His Majesty's dominions to which this Act extends. 35

Short title.

13. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act, 1920.